(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

DATE: MAY 22 2013 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)(A)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification for the beneficiary as an "alien of exceptional ability," as a game preserve manager, pursuant to section 203(b)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(A). The petitioner further asserts that the beneficiary qualifies for blanket labor certification pursuant to 20 C.F.R. § 656.5, Schedule A, Group II.

The director found that the "evidence submitted does not establish" that "the petitioner's offered position of game preserve manager demands an individual with exceptional ability." The director further found that "the evidence does not establish that the beneficiary's work in the year prior to filing required exceptional ability or that the intended work in the proffered position requires a person of exceptional ability." The director also found that "the record fails to establish a valid job offer continues to exist between the petitioner and the beneficiary." Finally, the director found that "the posting does not comply with the regulatory requirements" and, thus "the petition is not accompanied by a proper application for labor certification."

On appeal, counsel submits a brief. The filing date of the original petition was August 17, 2007. Therefore, evidence submitted in response to the director's request for evidence which references events that occurred after the date of filing may not be considered here. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). For the reasons discussed below, upon review of the entire record, the AAO upholds the director's conclusion that the petitioner has not established the beneficiary's eligibility for the classification sought.

I. LAW

Section 203(b) of the Immigration and Nationality Act (the Act) states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability.--
>
> (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational

> interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered." The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the following six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business:

> (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
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> (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
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> (C) A license to practice the profession or certification for a particular profession or occupation;
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> (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
>
> (E) Evidence of membership in professional associations; or
>
> (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

Where the petitioner fails to submit the requisite evidence, the proper conclusion is that the petitioner failed to satisfy the regulatory requirement of three types of evidence. *See Kazarian v. USCIS*, 596 F.3d 1115, 1122 (9th Cir. March 4, 2010). If the petitioner has submitted the requisite evidence, USCIS makes a final merits determination as to whether the evidence demonstrates "a degree of expertise significantly above that ordinarily encountered." 8 C.F.R. § 204.5(k)(2); *see also Kazarian,* 596 F.3d at 1119-20. Only aliens whose achievements have garnered "a degree of expertise significantly above that ordinarily encountered" are eligible for classification as aliens of exceptional ability. 8 C.F.R. § 204.5(k)(2); *see also Kazarian,* 596 F.3d at 119-22.

While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning in *Kazarian* persuasive to the classification sought in this matter. Specifically, the regulations state a regulatory standard and provide a list of suggested types of evidence, of which the petitioner must submit a certain number. Significantly, USCIS may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian,* 596 F.3d at 1221, *citing Love Korean Church v. Chertoff,* 549 F.3d 749, 758 (9th

Cir. 2008). Thus, if the regulatory standard is to have any meaning, USCIS must be able to evaluate the quality of the evidence in a final merits determination.

The *Kazarian* court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence on behalf of the beneficiary under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

While addressed by the director in the request for evidence, but not specifically addressed in the director's decision, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the above six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business.

A. Evidentiary Criteria[1]

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability

Although the petitioner submitted an evaluation of the beneficiary's credentials from Globe Language Services, Inc., the petitioner failed to submit an official academic record as required by the plain language of the regulation.

In light of the above, the petitioner has not submitted qualifying evidence that the beneficiary meets the plain language requirements set forth at 8 C.F.R. § 204.5(k)(3)(ii)(A).

[1] The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought

Although the petitioner did not submit letters with the instant petition, the record contains letters from employers which show that the beneficiary has at least ten years of full-time experience in the occupation for which he is being sought.

In light of the above, the petitioner has submitted qualifying evidence that the beneficiary meets the plain language requirements set forth at 8 C.F.R. § 204.5(k)(3)(ii)(B).

A license to practice the profession or certification for a particular profession or occupation

The petitioner submitted a copy of the beneficiary's self-serving resume which states that the beneficiary received a certification from for training as a game ranger. However, the petitioner did not provide any documentary evidence to support the beneficiary's assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

In light of the above, the petitioner has not submitted qualifying evidence that the beneficiary meets the plain language requirements set forth at 8 C.F.R. § 204.5(k)(3)(ii)(C).

Evidence of membership in professional associations

The petitioner submitted a copy of the beneficiary's self-serving resume which states that the beneficiary is a member and a registered However, the petitioner did not provide any documentary evidence to support the beneficiary's assertion. As stated above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

In light of the above, the petitioner has not submitted qualifying evidence that the beneficiary meets the plain language requirements set forth at 8 C.F.R. § 204.5(k)(3)(ii)(E).

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations

In response to the director's request for evidence, the petitioner submitted six letters of recommendation. As previously stated, the petitioner must establish the beneficiary's eligibility as of the filing date, August 17, 2007. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. Therefore, letters which reference events which occurred after the filing date cannot be considered here. Furthermore, the letters do not provide evidence of recognition for achievement,

nor demonstrate that the beneficiary has made significant contributions to the industry, as required by the regulation.

While the remaining letters are complementary of the beneficiary's knowledge and skills, they also fail to identify significant contributions to the industry and recognition of the beneficiary's achievements.

In light of the above, the petitioner has not submitted qualifying evidence that the beneficiary meets the plain language requirements set forth at 8 C.F.R. § 204.5(k)(3)(ii)(F).

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated that the beneficiary has a degree of expertise significantly above that ordinary encountered. 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian,* 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of such expertise, the AAO need not explain that conclusion in a final merits determination.[2] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

Therefore, the documentation submitted has not shown that the beneficiary has a degree of expertise significantly above that ordinarily encountered and the petitioner failed to establish the beneficiary is qualified for classification as an alien of exceptional ability under section 203(b)(2) of the Act. Thus, the petitioner has not established that the beneficiary is qualified for the benefit sought. On that basis alone, the petition cannot be approved.

B. The Offered Position

The regulation at 8 C.F.R. § 204.5(k)(4) provides the following information regarding labor certification and Schedule A designation for classification as aliens who are members of the professions holding advanced degrees or aliens of exceptional ability:

> (i) *General.* Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, by an application for Schedule A designation (if applicable), or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program. To apply for Schedule A designation or to establish that the alien's occupation is within the Labor Market Information Program,

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[2] The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d at 145. In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

> a fully executed uncertified Form ETA-750 in duplicate must accompany the petition. *The job offer portion of* the individual labor certification, *Schedule A application*, or Pilot Program application *must demonstrate that the job requires* a professional holding an advanced degree or the equivalent or *an alien of exceptional ability*.

(Emphasis added.) As required by statute, a certified ETA Form 9089, Application for Permanent Employment Certification, in duplicate accompanied the petition. The job offer portion of the labor certification in this matter indicates that the proffered position requires a bachelor's or equivalent degree in "Farm & Ranch Management" or "Zoology or Wildlife Biology" and 12 months of experience in the job offered. The ETA Form 9089 also indicates that a high school diploma and 108 months of experience in "any wildlife management position involving large cats" would be acceptable. No specific skills or other requirements are listed in Item 14 of the ETA Form 9089.

The director found that "the evidence submitted does not establish" that the "offered position...demands an individual with exceptional ability." On appeal, counsel asserts that "a quick perusal of" the petitioner's website "clearly indicates that the animals with which [the beneficiary] worked and intended to work in the future, were such that an alien without exceptional ability in game management would surely be at risk for injury." Counsel further asserts that "the moment a cat turns on the game preserve manager is the moment his/her exceptional ability becomes necessary." However, as stated above, the labor certification filed in support of a Schedule A application for classification as an alien of exceptional ability must still comply with the regulation at 8 C.F.R. § 204.5(k)(4), a regulation counsel does not address.

U.S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm'r 1986). *See also, Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *See generally Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification application form]." *Id.* at 834 (emphasis added).

The petitioner failed to demonstrate that the job requires an alien of exceptional ability in the job offer portion of the labor certification as set forth at 8 C.F.R. § 204.5(k)(4). On that basis alone, the petition cannot be approved.

III. SCHEDULE A GROUP II DESIGNATION

A. Prevailing Wage Determination and Notice of Filing

The regulation at 20 C.F.R. § 656.15 provides, in pertinent part:

> (a) *Filing application.* An employer must apply for a labor certification for a Schedule A occupation by filing an application with the appropriate DHS office, and not with an ETA application processing center.
>
> (b) *General documentation requirements.* A Schedule A application must include:
>
> (1) An Application for Permanent Employment Certification form, which includes a prevailing wage determination in accordance with § 656.40 and § 656.41.
>
> (2) Evidence that notice of filing the Application for Permanent Employment Certification was provided to the bargaining representative or the employer's employees as prescribed in § 656.10(d).

The regulation at 20 C.F.R. § 656.10(d)(1) states that notice of the filing must be provided:

> (i) To the bargaining representative(s) (if any) of the employer's employees in the occupational classification for which certification of the job opportunity is sought in the employer's location(s) in the area of intended employment. Documentation may consist of a copy of the letter and a copy of the Application for Permanent Employment Certification form that was sent to the bargaining representative.
>
> (ii) If there is no such bargaining representative, by posted notice to the employer's employees at the facility or location of the employment. The notice must be posted for at least 10 consecutive business days. The notice must be clearly visible and unobstructed while posted and must be posted in conspicuous places where the employer's U.S. workers can readily read the posted notice on their way to or from their place of employment . . . In addition, the employer must publish the notice in any and all in-house media, whether electronic or printed, in accordance with the normal procedures used for the recruitment of similar positions in the employer's organization.

As stated by the director in her denial, "proper notice was not provided between 30 and 180 days before filing the application." On appeal, counsel cites *Matter of Luigi's Restaurant*, 2009-PER-00357 (BALCA 2009). However, the sole issue before BALCA was whether the employer had timely submitted its compliant notice of filing to DOL, not whether the posting complied with the regulation. In the instant petition, the petitioner failed to comply with the regulation at 20 C.F.R. § 656.10(d)(1)(ii), as conceded by counsel.

In addition, the director found that "the record includes no documentary evidence or employer attestation concerning the location of the posting or the publication of the notice of filing in any in-house media under 20 C.F.R. § 656.10(d)(1)(ii)." On appeal, the petitioner does not contest the director's findings or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *see also Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

In light of the above, the AAO agrees with the director's finding that "[a]s the posting does not comply with the regulatory requirements, the petition is not accompanied by a proper application for labor certification." On that basis alone, the petition cannot be approved.

B. Exceptional Ability

(i) Law

The regulation at 20 C.F.R. § 656.15(d)(1) provides, in pertinent part:

> An employer seeking labor certification on behalf of an alien to be employed as an alien of exceptional ability in the sciences or arts (excluding those in the performing arts) must file documentary evidence showing the *widespread acclaim and international recognition* accorded the alien by recognized experts in the alien's field; and *documentation showing the alien's work in that field during the past year did, and the alien's intended work in the United States will, require exceptional ability*. In addition, the employer must file documentation about the alien from at least two of the following seven groups:
>
> (i) Documentation of the alien's receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought;
>
> (ii) Documentation of the alien's membership in international associations, in the field for which certification is sought, which require outstanding achievement of their members, as judged by recognized international experts in their disciplines or fields;
>
> (iii) Published material in professional publications about the alien, about the alien's work in the field for which certification is sought, which shall include the title, date and author of such published material;
>
> (iv) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which certification is sought;

> (v) Evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought;
>
> (vi) Evidence of the alien's authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional journals with an international circulation;
>
> (vii) Evidence of the display of the alien's work, in the field for which certification is sought, at artistic exhibitions in more than one country.

(Emphasis added.)

As stated by the director in her denial, "the evidence does not establish that the beneficiary's work in the year prior to filing required exceptional ability or that the intended work in the proffered position requires a person of exceptional ability," as required by regulation at 20 C.F.R. § 656.15(d)(1). While counsel summarizes the director's finding in his brief, he does not contest the director's finding. As counsel does not specifically explain how the director erred, the petitioner has abandoned those claims. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1228 n. 2, *Hristov v. Roark*, 2011 WL 4711885 at *9. A passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11th Cir. 2009). On that basis alone, the petition cannot be approved.

As stated previously, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. The AAO will again review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence on behalf of the beneficiary under at least two criteria, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of two types of evidence.

(ii) Analysis

In the initial petition, counsel incorrectly states that "[a]lthough the regulations do not specifically state it, the use of comparable or alternative criteria, similar to the E-1-1 and O-1 criteria, is also acceptable." While the use of comparable evidence is permitted under different classifications, including the ones mentioned by counsel, there is no regulatory provision that would allow the use of comparable evidence to satisfy the evidentiary requirements for Schedule A, Group II. Therefore, the AAO will review the evidence under the plain language requirements of each criterion claimed.

Furthermore, as previously stated, the filing date of the original petition was August 17, 2007. Therefore, evidence submitted in response to the director's request for evidence which references events that occurred after the date of filing may not be considered here. Eligibility must be established at the time of filing. *Matter of Katigbak*, 14 I&N Dec. at 49.

(iii) Evidentiary Criteria[3]

Documentation of the alien's receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought

Although the beneficiary's resume lists that he was the recipient of the award, the record contains no documentation regarding the award and no other mention of it. As it was not addressed on appeal, the petitioner has abandoned any claim regarding this award. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1228 n. 2, *Hristov v. Roark*, 2011 WL 4711885 at *9.

Documentation of the alien's membership in international associations, in the field for which certification is sought, which require outstanding achievement of their members, as judged by recognized international experts in their disciplines or fields

Although the beneficiary's resume lists that he is a member of the , the record contains no documentation regarding this membership and no other mention of it. As it was not addressed on appeal, the petitioner has abandoned any claim regarding this award. *Id.*

Published material in professional publications about the alien, about the alien's work in the field for which certification is sought, which shall include the title, date and author of such published material

On appeal, counsel asserts that the beneficiary's "participation in internationally syndicated wildlife shows" satisfies this criterion. The plain language of the regulation requires *published material in professional publications*. Although not addressed by counsel on appeal, the record does contain a few articles which mention the beneficiary. However, the record contains no evidence that the articles appear in professional publications, as required by the regulation.

In light of the above, the petitioner has not submitted qualifying evidence that the beneficiary meets the plain language requirements of the criterion.

Evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought

As previously stated, eligibility must be established at the time of filing. Therefore, letters which reference events which occurred after August 17, 2007 cannot be considered here. *Matter of Katigbak*, 14 I&N Dec. at 49. While the remaining letters praise the beneficiary and/or his work, neither the letters, nor counsel, claim that the beneficiary has made *original scientific or scholarly* contributions *of major significance*.

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[3] The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010).[4] USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

In light of the above, the petitioner has not submitted qualifying evidence that the beneficiary meets the plain language requirements of the criterion.

> *Evidence of the alien's authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional journals with an international circulation*

On appeal, counsel asserts that the beneficiary's "participation in internationally syndicated wildlife shows" also satisfies this criterion. The plain language of the regulation requires *authorship of published scientific or scholarly articles* in the field and that the articles be *published.* Although not addressed by counsel on appeal, the record does contain evidence that the beneficiary may have published a children's book. However, the record contains no evidence, nor does counsel claim, that this book would constitute evidence under this category.

In light of the above, the petitioner has not submitted qualifying evidence that the beneficiary meets the plain language requirements of the criterion.

> *Evidence of the display of the alien's work, in the field for which certification is sought, at artistic exhibitions in more than one country.*

On appeal, counsel asserts that the beneficiary's "participation in internationally syndicated wildlife shows" also satisfies this criterion. However, the plain language of the regulation requires *display* of the alien's work *at artistic exhibitions in more than one country*. Counsel fails to demonstrate how an appearance on a television show is display of the beneficiary's work at an artistic exhibition.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the criterion.

Had the petitioner submitted the requisite evidence under at least two evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated the widespread acclaim and international recognition of the beneficiary by recognized experts in his field. 20 C.F.R. § 656.15(d)(1); *see also Kazarian,* 596 F.3d at 1119-20. While the AAO concludes that the

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[4] In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

evidence is not indicative of such acclaim and recognition, the AAO need not explain that conclusion in a final merits determination. Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of two types of evidence. *Id.* at 1122. On that basis alone, the petition cannot be approved.

IV. Valid Job Offer

As previously stated, the director also found that "the record fails to establish a valid job offer continues to exist between the petitioner and the beneficiary." On appeal, counsel asserts that "INA § 204(j) specifically allows the Beneficiary to port to a new employer 180 days after an I-140 and I-485 have been concurrently filed." Although section 204(j) of the Act, 8 U.S.C. § 1154(j), provides that an employment-based immigrant visa petition shall remain valid with respect to a new job if the beneficiary's application for adjustment of status has been filed and remained unadjudicated for 180 days, the petition must have been "valid" to begin with if it is to "remain valid with respect to a new job." *Matter of Al Wazzan*, 25 I&N Dec. 359 (AAO 2010). To be considered valid in harmony with related provisions and with the statute as a whole, the petition must have been filed for an alien who is entitled to the requested classification and that petition must have been approved by a USCIS officer pursuant to his or her authority under the Act. An unadjudicated immigrant visa petition is not made "valid" merely through the act of filing the petition with USCIS or through the passage of 180 days. *Id.*

V. Conclusion

The documentation submitted has not shown that the beneficiary has a degree of expertise significantly above that ordinarily encountered and the petitioner failed to establish the beneficiary is qualified for classification as an alien of exceptional ability under section 203(b)(2) of the Act or Schedule A, Group II designation. Thus, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.